SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

PRISCILLA BAKING COMPANY ET AL.

vs.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The Petitioner, Priscilla Baking Company et al., by its president and attorney in fact, Joseph A. Letourneau, hereby prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the First Circuit entered in the above cause on February 6, 1941, affirming the decisions of the Processing Tax Board of Review.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the First District affirmed the decisions of the Processing Board of Review on February 6, 1941. [Not yet reported.]

JURISDICTION

The original judgment of the Court of Appeals was entered February 6, 1941. The jurisdiction of this court is involved under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States Processing Tax Board of Review erred in dismissing the proceedings before it.

STATUTES AND CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the Constitution provides that: "No private property shall be taken for public use, without just compensation."

Pertinent Provisions of Statutes involved are: Revenue Act of 1936, c. 690, 49 Stat. 1648, Title VII, Refunds of Amounts Collected Under the Agricultural Adjustment Act. Sections 901, 902, 903 (as amended by section 405, Revenue Act of 1939, c. 247, 53 Stat. 862), 904, 905, 906, and 913.

Statement of the Case

The proceedings were consolidated before the Circuit Court of Appeals in a single printed record, were instituted before the United States Processing Tax Board of Revenue by petitions filed by the Priscilla Baking Company and the Priscilla Baking Lunch Company to review the action of the Commissioner of Internal Revenue in rejecting claims for refund totaling $1,554.41 filed by the former (R. 5-8), and claims for refund totaling $1,013.68 filed by the latter (R. 52-58).

The Petitioner alleges that they are Massachusetts Corporations with their principal place of business in Boston. The Petitioner further alleges that the aforementioned claims were paid by them to their vendors on account of processing taxes imposed under the Agricultural Adjustment Act. c. 25, 48 Stat. 31, upon the domestic processing of such vendors of wheat, sugar, and hogs.

Some of the claims of the Priscilla Baking Company were rejected on the grounds that they were not filed after June 22, 1936 as required by Title VII of the Revenue Act of 1936 (R. 8-11), while others were rejected on the ground that the Petitioner did not pay any amount to the Government as tax under the Agricultural Adjustment Act and that Title VII of the Revenue Act of 1936 does not authorize refund under such circumstances (R. 11-15).

The Commissioner moved to dismiss both proceedings on the ground that the Processing Tax Board of Review was without jurisdiction for the reasons that (1) the refund claims had been prepared on P. T. Form 24, and had not been filed in compliance with Section 903 of the Revenue Act of 1936; (2) that the petitions were not filed with the Board of Review within the time prescribed by Section 906 of the Revenue Act of 1936; and (3) that the petitions did not state facts sufficient to constitute a cause of action against the Government (R. 29-30; 250).

The Processing Tax Board of Review dismissed both appeals on the ground that the petitions were not filed with it within the time prescribed by Section 906 (c) of the Revenue Act of 1936 (R. 30-31; 250).

Specification of Error to be Urged

The Court of Appeals erred in affirming the decision of the Processing Tax Board of Revenue in that in so doing the Fifth Amendment of the Constitution was violated; further the Petitioner did state facts sufficient to constitute a cause of action against the Government (R. 29-30; 250).

Reasons for Granting the Writ

Rule 38, section 5 of the Rules of this Court specifies as to the classes of cases in which applications for writs of certiorari to a Circuit Court of Appeals will be considered, those

> "Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter—or has decided a federal question in a way probably in conflict with applicable decisions of this court."

It is submitted that in the present case:

The decision of the Court below is probably in conflict with the applicable decisions of this Court as rendered in interpretation of the Fifth Amendment to the United States Constitution.

Efforts Made to Adjust Claims

As shown on pages 9, 10, 11, 12, 13 & 14 (Priscilla Baking Co.) and pages 55, 56, 57 & 58 (Priscilla Baking Lunch Co.) of transcript of record, our claims were rejected in full by the Commissioner of Internal Revenue.

We then consulted three different attorneys of good repute and ability named:

1—James S. Ballantyne, 43 Roxbury Street, Roxbury, Massachusetts. Mr. Ballantyne did not care to act for us.

2—A. John Serino, 20 Pemberton Square, Mass. Mr. Serino stated that we had no right to sue the Government.

3—Joseph F. Lockett, 50 Congress Street, Boston, Mass. Mr. Lockett wanted $100. to go to Washington and $300. as a retainer. After several interviews in which he failed to show any knowledge with respect to the handling of these cases, we decided not to employ him.

Next, we consulted Mr. John R. Salmon who has charge of Processing Taxes for Internal Revenue in Boston, Mass. Mr. Salmon gave us no encouragement.

Our next step was in entering a suit in the United States District Court of Boston, Mass. V. W. M. Welch, former Collector of Internal Revenue in Boston, Mass. We were turned down on technicalities.

We then appealed through the United States Circuit of Appeals in Boston, Mass. (No. 3439 of 1938, October Term), where the decision was to the effect that we should have applied to a tribunal empowered to handle these claims. We quote the decision in part as follows:

> "Section 906 of said Agricultural Adjustment Act prohibits an action to recover a refund of processing taxes collected under the act to be maintained in the District Courts, but provides a Special Board to consider and pass upon all controversies pertaining to such refunds, with provision for review of its decisions by the Circuit Court of Appeals and the Court of Appeals for the District of Columbia. *Annistion Mfg. Co.* v. *Davis,* 301 U. S. 337.
>
> The plaintiff has clearly misconceived his remedy, if any.
>
> The judgment will be:
>
> The judgment of the District Court is affirmed."

Through the kindness of Mr. Arthur I. Charron, Clerk of the United States Circuit Court of Appeals, Boston, Massachusetts, we discovered that we should have applied to the United States Processing Tax Board of Review for redress.

It is rather strange that the three attorneys consulted, and also Mr. John R. Salmon of Internal Revenue knew nothing about the United States Processing Tax Board of Review.

Our proceedings through the United States Processing Tax Board of Review were carried on in a brutal and arbitrary manner on their part with the result that we are now appealing to this honorable court.

The functions of the United States Processing Tax Board of Review are apparently of the nature of prosecutor, judge, jury and executioner. They compelled us to furnish 875 pages of details (5 sets of copies). We were also deluged with an assortment of rules and regulations, instructions and limitations of more than forty pages.

We were unable to secure the proper forms from Internal Revenue, see page 32 of transcript of record. However, a few weeks after September 15, 1936, we received from Internal Revenue Forms 945 and 945A, see pages 35 to 46 inclusive of transcript of record, which we filed in part, under oath, although we could not understand the value or the necessity of such forms.

Conclusion

It is in the public interest that the conflict which exists here, in that the Petitioner's property was taken without due process of law and without compensation as provided for by the Fifth Amendment to the United States Constitution, should be resolved by an authoritative decision of this Court.

The Petitioners believe that no economic theory should be above the Constitution.

Wherefore, it is respectfully submitted that this Petition should be granted.

Respectfully submitted,

Priscilla Baking Company et al.,

by Joseph A. Letourneau, *President*

Attorney in Fact
With Powers of Attorney